

Thom Brown Shoes, Inc. and Shoe Division, Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Case 29-CA-7839

July 27, 1981

DECISION AND ORDER

On February 18, 1981, Administrative Law Judge Joel P. Biblowitz issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a reply brief to the General Counsel's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge: This case was heard before me in Brooklyn, New York, on September 22 and 23, 1979. The complaint was issued on April 29, 1980, based on a charge filed on March 6, 1980, by Shoe Division, Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, herein called the Union. The complaint alleges that Thom Brown Shoes, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act, by subjecting employee William Feinberg to closer supervision than he had previously been subject to, and by assigning him more arduous and less agreeable job tasks than he previously had. In addition, the complaint alleges that Respondent discharged and failed and refused to reinstate Feinberg to employment due to his support for, and other activities on behalf of, the Union.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with its principal office and place of business located at 80 Mal Drive, Lindenhurst, New York, is engaged in the manufacture, sale, and distribution of shoes and related products. During the past year Respondent purchased, and caused to be delivered to its place of business, wood, leather,

and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were received from enterprises located within the State of New York, each of said enterprises having received said goods and materials in interstate commerce directly from points outside of New York State. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and I so find.

II. THE LABOR ORGANIZATION INVOLVED

Frank Saffiotti, manager-treasurer of the Union, testified that the purpose of the Union is to organize employees and thereafter to enter into collective-bargaining agreements with employers in order to improve the working conditions of the employers' employees. Employees take part in negotiations with representatives of the Union and management and, in fact, in one of the collective-bargaining agreements presently in effect between the Union and an employer, two employees who were members of the Union's negotiating committee signed the agreement along with Saffiotti and the Employer. I therefore find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

There are a number of unfair labor practices alleged herein, all involving actions directed at employee William Feinberg. Most important is the allegation that he was unlawfully discharged by Respondent on January 24, 1980, due to his activities on behalf of the Union. Additionally, there are the following allegations of discriminatory conduct directed at Feinberg: Respondent criticized his work more often than it had in the past; Respondent turned Feinberg's machine to prevent him from speaking with other employees; it established a rule prohibiting employees from eating lunch at their work station; it changed the production system to smaller units; and it prohibited Feinberg from doing recutting work for other employees. It is alleged that all these actions were caused by the fact that Feinberg acted as the Union's observer at the Board election conducted on August 3, 1979.

A. Background

The Union filed a petition on May 31, 1979;¹ beginning about the middle of June, Thom Brown, president of Respondent, made speeches to assembled employees, informing them of the "pros and cons" of the Union. During one of these meetings Leonard Dunst, the comptroller of Respondent, handed out papers to all the employees stating: "I do not give Thom Brown Shoes, Inc., permission to issue my address to the union" with space for a signature. Feinberg, as well as the other employees, signed it. On June 29, a Decision and Direction of Election issued, and, pursuant to that decision, an election was scheduled among certain of Respondent's employees (including Feinberg) for August 3. Sometime in the

¹ Unless otherwise stated, dates mentioned herein are for the year 1979.

month of July a meeting was held on Respondent's premises with all the employees, Brown, and Respondent's foreman, Anthony Del Maestro. At this meeting Brown again informed the employees of the pros and cons of the Union, and told the employees that nobody would know how they voted once they went into the voting booth. He also stated: "We can't find out who the observer is; whoever it is, he or she is [a] gutless creature." Shortly thereafter, one of the Union's representatives informed Feinberg that their planned observer at the election was unwilling to act as its observer and he asked Feinberg to be the observer; Feinberg reluctantly agreed. About 2 days before the election Feinberg informed Brown that he would be the Union's observer and Brown remarked, "something to the fact that he don't care . . ." The Union lost the election² and filed timely objections. The objections were sustained on the ground that Respondent had failed to provide the Union with a proper *Excelsior* list prior to the election. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966). On December 13, the Regional attorney for Region 29 of the Board made application to the United States District Court for the Eastern District of New York for an order requiring obedience to its *subpoena duces tecum*; on February 20, 1980, United States District Judge Edward R. Neaher issued a memorandum order directing Respondent to comply with the Board's subpoena. Thereafter Respondent supplied the Regional Office with a proper *Excelsior* list of eligible voters for the payroll period ending February 23, 1980. A second election was conducted among Respondent's employees on September 11, 1980; the Union also lost that election.

B. Criticism of Feinberg's Work

Feinberg testified that around 2 weeks after the election his relationship with Del Maestro changed. According to Feinberg: "He said this is not right, this is not wrong . . . you have got to speed it up, you are not doing good. He picked up on my quality of work, which he never did before." According to Feinberg's testimony, he was subject to this criticism about 10 times more often than the other cutters employed by Respondent.

C. Turning Feinberg's Machine

Feinberg began his employment with Respondent in February 1979; he was a cutter, which involved cutting the outside part of the leather or suede of the shoe. The machine he operated is called a "clicker" and it is the first step in the process of manufacturing the shoe. In addition to Feinberg there was one other full-time cutter and another full-time employee who did cutting during part of his workday. Prior to October the machine Feinberg worked on was situated so that while he worked he faced the other employees in the plant. In October Feinberg was out of work 1 day; when he returned he saw that his machine had been rotated 180 degrees to face

the wall. Del Maestro approached him and said, "I don't want you to leave the machine." Feinberg asked, "How do I do my work?" Del Maestro never answered. Feinberg testified that he asked this because the other cutter, who was located about 3 feet away, had the same dies as Feinberg was cutting. On cross-examination Feinberg was asked whether other employees' machines were also turned around or moved:

JUDGE BIBLOWITZ: The next day did you notice a lot of changes in the place?

WITNESS: Yes.

JUDGE BIBLOWITZ: A lot of machines were moved or turned around, as yours?

WITNESS: I don't know about turned around, but they were moved.

JUDGE BIBLOWITZ: A lot of machines?

WITNESS: Right.

Feinberg testified that the other clicker machines were moved before his machine was turned around and that the machine of an employee who was positioned about 10 feet from him was moved to the other side of the conveyor so that she no longer faced toward the wall while operating her machine.

Thomas O'Shea, who is employed by Respondent as a mechanic, testified that, in the fall of 1979, Respondent installed a new production system. They removed everything from the middle of the floor and all the machines were lined up along a conveyor belt, which was in the shape of a horseshoe; all the machines in the factory were turned around or moved to different locations. In addition, at this time Respondent purchased and leased new machinery to further modernize and accelerate production. O'Shea further testified, uncontradicted, that prior to October Feinberg complained to him on numerous occasions that he did not have enough light at his work station; by turning his machine around he had more light to work by. Additionally, according to O'Shea's testimony, prior to October, the dies that Feinberg and the others used were scattered on tables near their machines; in October when they turned Feinberg's machine they placed a pegboard on the wall he faced and placed the dies on hooks on the pegboard to make them easier to see and choose.

Dunst likewise testified that, around the fall of 1979, the production method of the factory was changed in that a horseshoe-shaped conveyor system was installed and the machines were moved so that the machines and the people operating them were next to the conveyor. Feinberg's machine, as well as the machines of others, was moved, but he received no complaint from Feinberg about it. According to Dunst, after this production change, Respondent's production "went up tremendously." During this period Respondent purchased and leased some new machines; some were delivered before the conveyor was installed and some afterward.

Brown also testified that every machine in the factory was moved to conform to Respondent's new conveyor method of production in November; some of the employees complained about the new location of the machines, but Feinberg did not complain. In fact, according to

² After the election Brown told all the employees: "Bill Feinberg served a function here and I don't want anybody to hold it against him, somebody had to represent the union and I want all of you to be friends with Bill, there is no reason to make an enemy out of him. We are all going to be friends. Now let's go back and make shoes."

Brown's testimony, Feinberg requested that his machine be moved because it was too dark where he was; after the machine was moved to a lighter area, Brown asked him, "Bill, does this look good to you?" Feinberg said that it did.

D. No Lunch at His Machine

Feinberg testified that prior to October or November he was allowed to eat lunch at his machine (the machine has a board on which he ate). He had a hotplate which he used to warm his lunch. Around October or November, Brown approached him while he was eating lunch at his machine and told him that he should not use the hotplate anymore, that he should eat in the lunch area on Respondent's premises and not eat at his machine. Prior to this, Feinberg had been using the hotplate at his machine for about 3 months and this was the first time he had been told not to use it. At this time, the older employees generally ate at their machines (although Feinberg does not think they used hotplates) while the younger employees ate at the lunchroom table. Feinberg testified that he was never informed by Brown or O'Shea that his hotplate had poor wiring and was in violation of OSHA regulations and that an additional reason that he could not use the hotplate and eat at his machine was because there was a problem with mice in the factory. Although he "perhaps" did see cups on the factory floor that were there to kill rodents, he never did see a rodent. After Feinberg received this order from Brown, he ate at the lunchroom table with the younger employees, while the other older employees continued to eat at their machines. Shortly thereafter Feinberg went out to eat one day, returned to work about 5 minutes before the lunch hour was over, and, while he was at his machine Brown told him, "I told you to eat over there," meaning the table in the lunchroom. After that, between the latter part of October until January 24, 1980, he ate at his machine and neither Brown nor Del Maestro spoke to him about it.

Without reciting the individual testimony of Respondent's witnesses on this issue, Respondent's position is that, if they wished to discriminate against Feinberg due to his actions on behalf of the Union, it is unreasonable to believe that the form of the discrimination would be to make him eat his lunch with a large number of employees with whom he could discuss the Union. Respondent's witnesses testified there were problems with Feinberg's eating at his machine; one was that his hotplate was in poor condition and that this was pointed out to Respondent by its insurance investigator who said that it was illegal. Additionally, the "stray" food from his lunch was getting on the floor and on the leather on his machine and table, thereby causing both rodents in the factory and damage to the leather goods. Respondent's witnesses testified that O'Shea constructed a lunch table for all the employees to eat at, specifically for this reason, and Brown asked all the employees to eat at this table.

E. Change Regarding Production Orders

This allegation refers to the system used by Respondent for its cutters to be assigned work orders. These work orders set forth all the information the employees need about the shoes to be produced, including the die to be used and the size and quantity to be manufactured. Feinberg testified that prior to November he could look through this box containing the work orders, and "pick and choose" a number of similar orders; although this would involve cutting a large number of shoes at one time (often as many as 120), overall the work would be easier because the similarity of the jobs would allow him to cut the dies for all the shoes at one time. Beginning in or about November, this system was changed for all the cutters to require them to take a work order from the top of the box on each occasion. As Feinberg testified: "We weren't allowed to go out of order . . . We couldn't be selective." This resulted in his obtaining smaller work orders on each occasion that he chose a work order.

Brown testified that there were a number of reasons for the change in production requiring the employees to take only the top work order from the box. One was that generally production should be in the order that the customers ordered the shoes from Respondent; by requiring the employees to take the work order from the top Respondent could control the order of production. Additionally, cutters sometimes chose the easiest jobs, causing complaints from others. Lastly, the consolidation of a number of work orders (for example, 90 shoes) would be divided into sizes (for example 10 size 5, 30 size 7, 40 size 8, and 10 size 10). This would require a large amount of the particular leather involved (more than Respondent would, in all probability, have in stock on any one occasion) and if the cutter began cutting the leather by size, he would probably exhaust the supply of that type of leather before completing all the sizes (or even only completing two of the sizes) and thus Respondent would have no complete orders to ship. However, when individual work orders are picked, each order will be completed before the employee proceeded to the next one. The employees are paid on a straight salary basis.

F. The January 24, 1980, Termination

Prior to March, Feinberg used to recut leather for other of Respondent's employees who had made an error on the leather. In March, Del Maestro told Feinberg: "Don't do it. I want to know who is doing these things." According to Feinberg's testimony—"He didn't make it too emphatic." About a week after the election Del Maestro informed Feinberg that he did not want him performing recutting work anymore; if it had to be performed they should see Del Maestro first and he would give Feinberg permission to perform the work.

Feinberg testified that by January 24, 1980, Del Maestro "was putting extra pressure on me." On that day, a fellow employee, Murray Heffner, asked Feinberg to recut a piece of leather for him. Feinberg told him, "[Y]ou shouldn't be here," and Heffner said "come on, its a little cut." Feinberg said, "I will cut it, but if he [Del Maestro] is going to chase me I am going to blow

up." Feinberg and Heffner walked to the leather room.³ Del Maestro approached them and said either "I told you not to come down here" or "What are you doing away from your machine, I told you not to leave your machine." A heated argument developed between Feinberg and Del Maestro⁴ and Del Maestro told Feinberg, "If you don't like it, quit." Feinberg said, "I am not quitting, you want to fire me, fire me, I am not quitting" and Del Maestro said, "[Y]ou are fired." Feinberg picked up his tools, went to the office where Dunst informed him that Brown was not in, and left. The next day (Friday) he returned and picked up his check for the days he had worked. On the following Monday, Feinberg called Brown and told him that he wanted to explain to Brown what had occurred; Brown said that he had just learned of the situation and asked Feinberg what happened. Feinberg explained to him what had occurred and told Brown that he would like to return to work. Brown informed Feinberg that he would like to have him back, but did not want to go over the head of his foreman because it was the foreman who had fired him. He said that he would speak to Del Maestro and get back to Feinberg, but he never did.

Respondent's position is that Feinberg quit his employment at Respondent.⁵ In support thereof, Respondent cites a portion of the transcript of Feinberg's hearing before the New York State Unemployment Insurance Department wherein he was asked: "How did your job end?" He answered: "told him to fire me."⁶

Although neither Del Maestro nor Heffner testified, O'Shea and Dunst testified that they overheard part of the argument between Feinberg and Del Maestro. O'Shea testified that on January 24, 1980, he was on a ladder (about 10 feet up) which was standing about 5 feet from Feinberg's machine. His testimony regarding what occurred in this incident is not very helpful as it is filled with characterizations and conclusions, rather than facts. For example: "Bill got very excited, which we all knew he normally was anyway, storming down the aisle . . . carrying on, swearing and cursing, talking to everybody, upsetting everybody in the factory." He did testify, however, that he heard Feinberg say that he did not need the job or the aggravation. O'Shea also testified that Del Maestro did very little talking and, although he could hear every word that Del Maestro said, he did not hear Del Maestro tell Feinberg that he was fired. After Feinberg left, O'Shea asked Del Maestro if Feinberg had

quit (O'Shea testified that when Feinberg walked out he left his machine on and O'Shea wanted to know whether he should turn the machine off, put the dies away, and turn the lights out), and Del Maestro said, "I don't know."

Dunst testified that on the morning when the Feinberg-Del Maestro incident occurred he was in the office and heard some yelling outside the office. He went to the shipping area and heard Feinberg say to Del Maestro, "What do you want from me?" Del Maestro said that he wanted shoes to go out because everybody else was being hung up and Feinberg said, "[W]ell, if you don't like it you can fire me" and Del Maestro pointed and said, "[I]f you don't like it there is the door."

Although Feinberg testified that he spoke to Brown on the Monday after his termination (January 28, 1980), Brown testified that he did not receive a call from Feinberg until "a week and a day after he left."⁷ Brown testified that Feinberg said, "Thom, I feel I owe you an explanation, you have been fair to me always and I owe you an explanation why I have—why I left." Brown informed Feinberg that he had already hired somebody else, but if he did not work out or if something came up he would talk to Del Maestro about it.

Respondent's records show an application for employment dated February 1, 1980, filed by Nesieh Rodriguez stating "cutter clicker" as the position desired and February 4 as the date he wished to begin employment. Rodriguez is the employee who was hired to replace Feinberg. Brown testified that Rodriguez worked for Respondent for 2 months⁸, took a temporary leave to go to Puerto Rico because his father had died, and then returned to Respondent's employ where he was still employed at the time of the hearing. Brown testified that, during the period that Rodriguez was away, he hired a replacement for him, but did not consider rehiring Feinberg because he walked off on the job and left the machine running.

Respondent also takes the position that if it were looking for an excuse to discharge Feinberg it could have done so because of his smoking. O'Shea and Brown testified that an insurance investigator came to Respondent's factory (they could not place a date for the visit or visits) and told them that there should be no smoking in the work areas of the factory and that "No Smoking" signs should be posted, which they were. All the employees were informed of this and were told only to smoke at the lunchroom table. Brown testified that both before and after the August 3 election he informed Feinberg that he was not to smoke at his machine. Feinberg continued to smoke, and Brown continued to ask him not to smoke and said, "I don't want to have to discharge you for smoking." According to Brown's testimony, Feinberg was the only employee who continued to smoke in the work areas after being told not to do so.

³ Brown testified that, around the end of 1979, Respondent built a separate room where the leather was stored. The employees were not to go into this room; if they needed leather, they were to request it from Del Maestro, who would obtain it for them. Feinberg testified that he was never told that he was not to go into the leather room without Del Maestro, but was told that "he didn't want me leaving my machine for any reason However, if he tells me I cannot leave my machine, I would figure that is what he meant."

⁴ Neither Del Maestro nor Heffner testified.

⁵ As will be discussed, *infra*, I would credit Feinberg's testimony and would therefore find that he was discharged by Del Maestro. Additionally, the complaint alleges that Del Maestro is a supervisor within the meaning of the Act. Although I do not believe that such a finding need be made herein because I credit Feinberg that Del Maestro discharged him and that Brown informed him that he did not want to go over Del Maestro's head and reemploy Feinberg, I would find that Del Maestro is a supervisor within the meaning of Sec. 2(11) of the Act.

⁶ Feinberg's claim for unemployment benefits was denied.

⁷ A few questions later Brown changed the time to "a week and a half afterwards."

⁸ Rodriguez' name was not included on the *Excelsior* list of employees employed as of February 23, 1980, submitted pursuant to the order of Judge Neaher discussed, *supra*, although Rodriguez did vote at the election conducted on September 11, 1980.

Feinberg also testified that both before and after the August 3 election Brown told him "dozens of times" not to smoke on the premises and that he received instructions "many times" that if he smoked he would be discharged because it was a danger and a hazard, although Feinberg testified that he never saw any "No Smoking" signs in the factory.

Credibility Determinations

Wherever there is a conflict, I would credit the testimony of Feinberg. What I appreciated most about his testimony was his willingness to admit to facts detrimental to his case—his openness both on direct and cross-examination. In contrast to Feinberg was Brown, who displayed a pompous, arrogant attitude, both on and off the witness stand. In addition, he displayed a disdain for the proceedings.⁹ I also found his testimony unreliable, too "pat." For example, his testimony regarding Rodriguez, who was hired to replace Feinberg, Rodriguez' application for employment is dated February 1, 1980. Feinberg testified that he asked Brown for his job back on the Monday after his termination, January 28, 1980. Brown first testified that he did not receive this call from Feinberg until "a week and a day" after Feinberg's termination (February 1, 1980), and then changed his testimony to "a week and a half" after Feinberg's termination; it appeared to me that Brown was fabricating his testimony in order to bolster his case on a close issue—that Rodriguez applied to work for Respondent before Feinberg called Brown.

Analysis

The sole basis for the alleged discrimination herein is the fact that Feinberg acted as observer for the Union at the election conducted on August 3. The sole statement indicating animus was Brown's statement (before Feinberg agreed to be the observer) that the Union's observer was a "gutless creature." Balancing this, however, was Brown's statement to Feinberg that he did not care when Feinberg told him that he would be the Union's observer, and Brown's statement to all the employees after the election that somebody had to be the Union's observer and that they should be friends with Feinberg. With a weak background of animus such as this, the General Counsel needs strong evidence of the discrimination practiced; unfortunately for the General Counsel this is not present herein.

In or about October (about 2 months after the election) Feinberg's machine was turned 180 degrees to face the wall rather than the production area it used to face. However, the evidence establishes that this was the period when Respondent installed its conveyor in the plant and all the plant's machines were moved or turned. Even Feinberg testified that, at that time, "a lot of the other machines were moved." This allegation implies that Respondent attempted to isolate Feinberg, and yet

the General Counsel's next allegation of discrimination (not allowing him to eat lunch at his machine) seems to imply just the opposite—that Respondent was forcing him to eat with the other employees. I find it difficult to reconcile these allegations. In addition, Respondent's reasons for requiring Feinberg to eat in the lunchroom seem reasonable—the possibility of falling food damaging the leather or causing rodents is a real one when an employee eats at his work station; additionally a hotplate such as Feinberg used could be a fire hazard when used in a work area with leather or other fabric nearby. For these reasons, I would dismiss the allegations that Respondent violated Section 8(a)(1) and (3) of the Act by turning Feinberg's machine and not allowing him to eat lunch at his machine.

I would likewise dismiss the allegation that Respondent violated Section 8(a)(1) and (3) by changing its production system to smaller orders. This new system applied to all employees and it seems to be a reasonable rule to insure equality among all the cutters—you cannot select the best work order, you must choose the order on top. Additionally, Feinberg was not harmed by this change as the employees were paid a straight hourly salary rather than being paid piece rate. I would therefore dismiss this allegation.

When Del Maestro approached Feinberg on January 24, 1980, Feinberg was violating two of Respondent's rules; he was in the leather room and he was preparing to do recutting work for a fellow employee (the first time Del Maestro told him not to do recutting work—though not emphatically—was in March, prior to the election). On the basis of Feinberg's testimony, which I have credited, I find that a heated argument developed between Feinberg and Del Maestro (not surprisingly, as Feinberg was prepared to "blow up" if Del Maestro appeared); at one point Del Maestro told Feinberg, "[I]f you don't like it, quit" to which Feinberg said, "I am not quitting, you want to fire me, fire me, I am not quitting" and Del Maestro told him, "[Y]ou are fired."

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), the Board set forth the rule it will henceforth apply in dual motive or pretextual cases such as the instant matter: "First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same conduct would have taken place even in the absence of the protected conduct." I would find that the General Counsel has not made the *prima facie* showing required under *Wright Line, supra*. The one instance of protected conduct by Feinberg occurred almost 6 months prior to the discharge and there was never any statement of animus directed toward Feinberg in regard to his acting as the observer; in fact, the two statements Brown made in that regard was the statement to Feinberg that he did not care and his statement to all the employees to "forgive and forget." Additionally, Feinberg knew on January 24, 1980, that he was violating Respondent's rules when he was in the leather room to do some recutting for a fellow employee and he invit-

⁹ On a number of occasions during the hearing (during the General Counsel's opening statement, and during Feinberg's direct examination and the direct examination of Dunst), I had to admonish Brown for laughing and engaging in other distractions during the hearing and the taking of testimony.

ed Del Maestro to discharge him. Although I might perceive discharge as too harsh a punishment for these infractions, the evidence does not support a finding that Feinberg was discharged because he acted as the observer for the Union at the August 3 election. I would therefore dismiss this 8(a)(1) and (3) allegation.

CONCLUSIONS OF LAW

1. The Respondent, Thom Brown Shoes, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Shoe Division, Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in any conduct in violation of the Act as alleged herein.

Based upon the entire record in this proceeding, I therefore shall make the following recommended:

ORDER¹⁰

It hereby is ordered that the complaint be, and it hereby is, dismissed in its entirety.

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.